IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.3176 of 2006

Azmi Charitable Trust and Ors. Petitioners
vs
MHADA and anr. Respondent.

Mr V.R.Tripathi for the petitioners
Mr. V.R. Joglekar with Mr.P.G. Sawant AGP
for the respondent Nos. 1 and 2.

CORAM: J.N. PATEL,Acg C.J. ,&
S.C.DHARMADHIKARI, J.
DATE: March 26, 2007.

P.C.:-

Heard the learned counsel for the parties.

1. The petitioners have approached this Court in its writ jurisdiction challenging the decision of respondent No.1 in changing the reservation of a plot which was meant for a school.

2 It is the contention of the petitioners that respondent No.1 has no authority under law to change the reservation and thereby the land reserved for a school in the earlier plan, has been alloted to respondent No.3 for development. Therefore, the petitioners seek a writ of mandamus from this Court that

such re-location of the plot, which was meant for a school, should be declared as null, void and illegal and that respondent Nos. 1 and 2 should take possession of the said land from respondent No.3 and consider the application dated 12th March 2002, made by the petitioners, instead allot the said land to the petitioners for their school purpose.

3 It is not in dispute that the disputed plot comes under the jurisdiction of MHADA and MHADA has taken a decision to identify the plot as reserved for residential use. As per the documents placed on record in sur-rejoinder, it has been pointed out by MHADA that there is encroachment on the plot as unauthorised mosque admeasuring 12 x 16 meters has been constructed and as per their policy they have been developing the plot for residential purpose and the plot which was reserved for school has been re-located. It is the case of MHADA that part approved layout is for building No.3, which is proposed to be built on the area earlier reserved for school. As per the revised lay out, the area now reserved for school is 3,125.18 sq meters i.e. Plot No.R-2. The MHADA is justified their re-location for the purpose of facilitating the proper development of the entire plot i.e. Plot No. R-3. Further MHADA proposed to construct 100 tenements on Plot R-3 out of which

84 tenements are required to be handed over as tenements for the project affected persons free of costs to SRA, which is clear from the LOI dated 18th October 2005 and particularly clauses 3,15 and 21 of the LOI issued in favour of respondent No. 3.

4. It is the further contention of MHADA that a small Balwadi admeasuring 536 sq feet has been already constructed by MHADA from out of the open amenity space admeasuring 3364 sq meters, forming part of the said S.No.138 and that the said Balwadi has been constructed out of the MLC fund and it is behind building No.106, and it has no concern either with plot No. R-2 or Plot No. R-3.

5. The contention of the petitioner that MHADA has not taken approval from the State or the BMC, cannot be sustained as the land vests with MHADA and respondent MHADA has taken decision in accordance with MHADA (Disposal of Land) Regulations, 1982.

6 It is submitted by the learned counsel for MHADA that the plot which has been already earmarked for school under the development plan would be put to public auction and the petitioners can very well participate in the same. In view of

this we find that the petitioners have no right to claim the plot in question. Therefore, there is no merit in the petition and the same is dismissed.

7. From the affidavit in reply and rejoinder filed by MHADA it is quite clear that the school has been re-located on plot No. R-2 under the revised development plan, which was earlier plot No. R-3 is the land meant for school and not for any other purpose. Therefore, this court accepts that MHADA will not further revise the reservation meant for school, which is required in the locality and would proceed further to get the school constructed on the said plot so that it is not encroached or alienated in any manner. In view of the fact that this Court has dismissed the petition, ad-interim order passed by this Court during vacation stands vacated.

8 The learned counsel for the petitioners submits that the ad-interim order granted by this court during vacation be continued at least for four weeks. We do not think that the request can be accepted for the very reason that the very development of the plot was stalled since January 2007 and it would rather cause substantial loss to MHADA whereas the petitioners have nothing to loose in the matter.

ACTING CHIEF JUSTICE

S.C. DHARMADHIKARI, J.